



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1995

Ms. Alesia L. Sanchez
Legal Assistant
Legal and Compliance, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-080

Dear Ms. Sanchez:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The Texas Department of Insurance (the "department") received a request for information about several insurance companies. You apparently have released some of the requested information. However, you submitted to this office for review representative samples of information concerning the Melba Crawford Insurance Company ("Crawford") and the Fred Frederick Insurance Agency ("Frederick"). You contend that the information concerning these companies is excepted from disclosure pursuant to sections 552.103(a) and 552.111. Your request was assigned ID# 24731.

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have submitted information showing that litigation is pending as to Crawford. You also have submitted information showing that litigation is reasonably anticipated as to Frederick. The documents you submitted relate to the pending litigation and the anticipated litigation concerning the respective companies.¹ However, you may not withhold some of the documents at issue.

Section 552.103(a) will not generally except from disclosure documents that all parties to pending or anticipated litigation have seen or had access to. Open Records Decision No. 349 (1982) at 2. Pleadings, motions, proposed orders, and the like cannot

¹One of the documents submitted appears to be non-responsive to the request. We did not review this document.

be withheld from disclosure pursuant to section 552.103(a) once they have been disclosed to the opposing party in litigation. Nor may letters, documents, and statements from or seen by the other parties be withheld under section 552.103(a). As to the documents that the opposing parties have not seen or had access to, these may be withheld pursuant to section 552.103(a). We note that the applicability of 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.²

As we have indicated, all of the documents except those that the opposing parties have seen or had access to may be withheld from disclosure pursuant to section 552.103(a). Also, the documents that the opposing parties in the pending and anticipated litigation have seen or had access to are not excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure inter- or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5. The documents at issue do not fit the definition of inter- or intra-agency communications. Since these documents may not be withheld under either section 552.103(a) or 552.111, they must be released. We have marked the documents that must be disclosed.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

²We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, a governmental body should submit representative samples, but if each record contains substantially different information then all must be submitted). This open records decision does not reach and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ref.: ID# 24731

Enclosures: Marked documents

cc: Mr. Larry G. Trimble
Attorney at Law
401 Studewood, Suite 340
Houston, Texas 77007
(w/o enclosures)